

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

OCT 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Truth-in-Billing)
and)
Billing Format)

CC Docket No. 98-170

Petition for Temporary, Limited Waiver

Dunkirk and Fredonia Telephone Company ("D&F") and its affiliate Cassadaga Telephone Corporation ("Cassadaga")(collectively the "Petitioners"), by counsel, hereby seek temporary, limited waiver of the Truth-in-Billing ("TIB") requirements established by the Federal Communications Commission ("Commission" or "FCC") in its First Report and Order and Further Notice of Proposed Rulemaking in the above-captioned matter.¹ Specifically, the Petitioners² seek temporary waiver until April 1, 2000 of the requirement of Section 64.2401(a)(2) regarding separating charges by service provider (the "TIB Separate Provider Requirement") for a small portion of their end user billing.³ Cassadaga is a member of the United States Telecom Association ("USTA"). As such, Cassadaga recognizes that a pending

¹ In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72, released May 11, 1999, 64 Fed. Reg. 34488 (June 25, 1999)("TIB Order"); Errata, CC Docket No. 98-170, DA 99-2092, released October 6, 1999.

² Attachment A is the declaration of William R. Westin, Vice President, Industry Affairs of the Petitioners. The declaration bears a facsimile signature. The original signed declaration will be filed with the Commission upon receipt by counsel.

³ In pertinent part, 47 C.F.R. § 64.2401(a)(2) states that "[w]here charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider. . . ."

Petition filed by USTA seeks similar relief for USTA member companies, and would not otherwise cover D&F unless the relief sought was applied to all carriers as USTA has suggested.⁴ Accordingly, in the event that action on the USTA Petition does not grant the extent of the relief requested herein, the Petitioners request a waiver of 47 C.F.R. §§ 64.2401(a)(2) until April 1, 2000, the date that the Commission has previously established for implementing certain other TIB requirements.⁵ Until the waiver requested expires, each of the Petitioners will continue to work diligently on the software billing system changes necessary to comply with the TIB Separate Provider Requirement, and, even after the waiver expires, their customer representatives will continue to provide assistance to customers with questions concerning charges assessed by particular carriers.

I. Background

D&F provides exchange and exchange access services to approximately 10,400 lines in New York. Cassadaga provides exchange and exchange access services to approximately 1,400 lines in New York. Each of the Petitioners is a rural telephone company under the Communications Act of 1934, as amended.

After release by the FCC of its TIB Order, the Company began addressing the various TIB requirements in order to ascertain what billing system changes would be required to ensure the Petitioners' compliance. The Petitioners rely upon their own billing system for the

⁴ See Reply Comments of USTA, CC Docket 98-170, filed September 10, 1999 at 2.

⁵ See 64 Fed. Reg. 55163 (Oct. 12, 1999); see also Public Notice, DA 99-2030 (Sept. 30, 1999) and Public Notice, DA 99-1789 (Sept. 2, 1999).

generation of their respective end user bills. When this system requires modifications (e.g., in order to address regulatory or other issues), Petitioners' perform such modifications themselves, including all necessary software modifications. Accordingly, the Petitioners included these activities as one part of their respective Year 2000 issue checklist associated with all of their computer-based systems.

Based on a misunderstanding of the extent of the FCC's waiver of certain of the TIB requirements,⁶ the Petitioners only recently became aware of the need to comply with the TIB Separate Provider Requirement by November 12, 1999. Once this misunderstanding was identified, the Petitioners immediately began to reassess their compliance with the TIB rules scheduled to go into effect on November 12th. Based on this assessment and the necessary software changes associated with full compliance with the TIB Separate Provider Requirement as well as other Year 2000 monitoring efforts, it is now clear that the Petitioners will not be able to implement the TIB Separate Provider Requirement for a small portion of the calls for which the Petitioners provide billing and collection services. The Petitioners anticipate, however, that they will be able to comply with the TIB rules by April 1, 2000.

The practical problems and billing software system limitations confronting the Petitioners arise from the billing and collection services that they provide through a clearinghouse for Alternate Operator Service ("AOS") service providers. In order to provide these services, the Petitioners receive AOS billing tapes from their clearinghouse. These tapes contain the AOS service provider usage for the Petitioners' customers. The usage is sorted by customer and by

⁶ See id.

time and date of that customer's usage. This usage is then printed by Petitioners in the appropriate customer's bill. The Petitioners provide a legend on the page containing these charges that identifies the name and contact number of the particular AOS service provider associated with that call. Because the calls are not separated by AOS service provider, the Petitioners will not be in compliance with the TIB Separate Provider Requirement when two (2) or more AOS service providers appear on a customer's bill in the same month.⁷ The Petitioners note, however, that the instances where this non-compliance will arise should be minimal.

Based on the Petitioners' recent experience, the vast majority of the customers being billed for AOS service provider calls make calls using only one (1) such provider. Instances where charges for two (2) or more AOS service providers arise on a customer's bill occur in less than approximately 1/2 of 1% (0.005), or typically less than 60 of the aggregated 12,000 end user bills that the Petitioners render in a given month contain charges for two (2) or more AOS service providers for a particular customer. Moreover, in the Petitioners' experience, customer inquiries regarding AOS provider charges are minimal. In light of Year 2000 issues and the billing and computer software issues raised by compliance efforts associated with the TIB Separate Provider Requirement, the Petitioners have concluded that they cannot accomplish the necessary software modifications nor successfully test such modifications required to comply with the TIB Separate Provider Requirement by November 12, 1999. The Petitioners believe, however, that they can accomplish such activities by April 1, 2000 as part of their overall TIB

⁷ See TIB Order at para. 31.

compliance efforts, although they will make every effort to comply with the TIB Separate Provider Requirement sooner than this date.

**II. Good Cause Exists for and the Public Interest
will be Served by a Grant of this Limited Waiver**

Based on these facts and circumstances, the Petitioners respectfully submit that good cause exists for a grant of this limited waiver, and that the public interest will be served by such action. As demonstrated herein, Petitioners are making diligent efforts to comply with the TIB requirements effective November 12, 1999. However, the Petitioners' compliance with the TIB Separate Provider Requirement is not feasible by this date. Consistent with the implementation of other TIB-required billing software changes, the Petitioners submit that compliance with the TIB Separate Provider Requirement should be possible by April 1, 2000. Accordingly, for the reasons stated, good cause exists for this waiver.⁸

Moreover, the Petitioners respectfully submit that the public interest would be served by this action. First, the Commission has recognized the need to balance the implementation of new regulatory directives which affect computerized systems with on-going Year 2000

⁸ "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

activities.⁹ The software changes required by Petitioners' billing system clearly fall into this Commission-defined category. The Commission's concerns regarding utilization of its Year 2000 Policy Statement to "'forestall' or 'roll back' disfavored regulations, or use this policy for purposes of competitive advantage"¹⁰ are not applicable here. The Petitioners are working toward TIB compliance and seek only a limited extension of time consistent with the Commission-prescribed compliance date of certain other TIB rules. Accordingly, there is no basis to conclude that the Petitioners are attempting to "forestall" or "roll back" disfavored regulations. In addition, there is no "competitive advantage" associated with this request. A grant of this waiver does not affect a competitor of the Petitioners; rather it allows an interim measure to be implemented that allows continuation of existing billing arrangements with other carriers in a manner consistent with the status of the overall TIB compliance efforts by the Petitioners.

Second, the Commission has already determined that the April 1, 2000 date is appropriate for implementing other TIB rules.¹¹ Accordingly, the ability of the Petitioners to continue to work toward the April 1, 2000 implementation date for all TIB rules would ensure efficiency and continuity in the enhancements to the Petitioners' billing system capability without incurring unnecessary expenditures or jeopardizing Year 2000 compliance issues.

⁹ See In the Matter of Minimizing Regulatory and Information Technology Requirements That Could Adversely Affect Progress Fixing the Year 2000 Date Conversion Problem, Year 2000 Network Stabilization Policy Statement, FCC 99-272, released October 4, 1999 ("Year 2000 Policy Statement") at para. 15.

¹⁰ Id. at para. 16.

¹¹ See n. 5, supra.

Third, the underlying goal of the TIB Separate Provider Requirement -- the ability of a customer to identify carriers and charges -- would not be frustrated by a grant of the requested waiver. As indicated above, when an AOS service provider appears on one of the Petitioners' end user bills, the affected customer is provided the name and contact number of each service provider through a legend on the bottom of the bill's page. Moreover, even after the requested waiver expires the Petitioners will continue to provide customer service assistance regarding billing inquiries and questions. In this way, the goal of the TIB Separate Provider Requirement is advanced. Waiver of the TIB Separate Provider Requirement as requested herein will merely maintain the status quo until such time as this requirement can be implemented efficiently by the Petitioners, while effecting the goals of these requirements in an alternative manner. The risk of harm to the public interest of non-compliance is further mitigated by the fact that the Petitioners will be able to comply with the TIB Separate Provider requirement for over approximately ninety-nine percent (99%) of the total number of customer bills issued within a month, and the fact that the Petitioners have experienced a small number of customer inquirers regarding AOS service provider charges.

Finally, the Petitioners note that, in the absence of this limited waiver, the ability of the Petitioners to bill for isolated customer-originated traffic on behalf of AOS providers would be in jeopardy. Facing the risk of non-compliance with the TIB Separate Provider Requirement, the Petitioners may be forced to consider terminating their billing relationship with the AOS providers. This, in turn, may increase the cost to the AOS provider of billing, thereby inhibiting the continued development of a competitive interexchange service marketplace.


III. Conclusion

Because D&F and Cassadaga are technically incapable of complying with the TIB Separate Provider Requirement by November 12, 1999, a grant of this request until April 1, 2000 will ensure that they can implement the Commission's TIB directives in an efficient manner while avoiding unnecessary expense or raising additional Year 2000 compliance issues. At the same time, the consumer goals of these TIB rules will not be frustrated by a grant of this request. Rather, such goals will be furthered by the Petitioners for the reasons stated herein. Accordingly, in the event that action on the USTA Petition does not grant the extent of the relief requested herein, D&F and Cassadaga request a waiver of the requirements of 47 C.F.R. § 64.2401(a)(2) until April 1, 2000.

Respectfully submitted,

**Dunkirk and Fredonia Telephone Company
Cassadaga Telephone Corporation**

By



David Cosson
Thomas J. Moorman
Margaret Nyland

Its Attorneys

Kraskin, Lesse & Cosson, LLP
2120 L Street, N. W., Suite 520
Washington, D.C. 20037
202-296-8890

October 27, 1999

**Declaration of William R. Westin
Vice President, Industry Affairs for
Dunkirk and Fredonia Telephone Company and
Cassadaga Telephone Corporation**


I, William R. Westin, Vice President, Industry Affairs of Dunkirk and Fredonia Telephone Company and Cassadaga Telephone Corporation (the "Companies"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Temporary, Limited Waiver" and the information contained therein regarding the Companies is true and accurate to the best of my knowledge, information, and belief.

Date 10-27-99


William R. Westin
Vice President, Industry Affairs

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition for Temporary, Limited Waiver" of Dunkirk and Fredonia Telephone Company and Cassadaga Telephone Corporation, was served on this 27th day of October, 1999 by hand delivery to the following parties:


Shelley Davis

Lawrence Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW Room 5-C450
Washington, DC 20554

Lisa Zaina, Acting Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-B303
Washington, DC 20554

Glenn T. Reynolds, Chief
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-A847
Washington, DC 20554

David Konuch, Attorney
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C313
Washington, DC 20036

International Transcription Services
1231 20th Street, NW
Washington, DC 20554